

**From:** [Quinones, Edwin](#)  
**To:** [sebyp@gtlaw.com](mailto:sebyp@gtlaw.com); [mdigiglia@glllaw.com](mailto:mdigiglia@glllaw.com)  
**Cc:** [bdoherty@glllaw.com](mailto:bdoherty@glllaw.com); [egieger@glllaw.com](mailto:egieger@glllaw.com); [marc.sebo@tceq.texas.gov](mailto:marc.sebo@tceq.texas.gov); [Josiam, Raji](#); [Adams, Adam](#)  
**Subject:** RE: USOR Site Meeting: EPA/TCEQ & City of Pasadena & Severn Trent - PRP Group mtg(s)  
**Date:** Friday, May 4, 2018 10:13:00 AM  
**Attachments:** [image001.png](#)

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Hi Paul,

I haven't discussed those times with Mr. Justis, who I've been told is scheduling the date and time. However, the other PRP Group attorneys have suggested that my proposed time (1:30 pm to 3:30 pm) is fine with them. Has Mr. Justis reached out to you on that date and time?

Ed Q.

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**From:** [sebyp@gtlaw.com](mailto:sebyp@gtlaw.com) [mailto:[sebyp@gtlaw.com](mailto:sebyp@gtlaw.com)]  
**Sent:** Thursday, May 03, 2018 5:10 PM  
**To:** Quinones, Edwin ; [mdigiglia@glllaw.com](mailto:mdigiglia@glllaw.com)  
**Cc:** [bdoherty@glllaw.com](mailto:bdoherty@glllaw.com); [egieger@glllaw.com](mailto:egieger@glllaw.com); [marc.sebo@tceq.texas.gov](mailto:marc.sebo@tceq.texas.gov); Josiam, Raji ; Adams, Adam

**Subject:** RE: USOR Site Meeting: EPA/TCEQ & City of Pasadena & Severn Trent - PRP Group mtg(s)

[Yes pls confirm asap- thanks](#)

Paul M. Seby  
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**From:** Quinones, Edwin [<mailto:quinones.edwin@epa.gov>]  
**Sent:** Thursday, May 03, 2018 4:09 PM  
**To:** Seby, Paul (Shld-DEN-Env); [mdigiglia@glllaw.com](mailto:mdigiglia@glllaw.com)  
**Cc:** [bdoherty@glllaw.com](mailto:bdoherty@glllaw.com); [egieger@glllaw.com](mailto:egieger@glllaw.com); [marc.sebo@tceq.texas.gov](mailto:marc.sebo@tceq.texas.gov); Josiam, Raji; Adams, Adam  
**Subject:** RE: USOR Site Meeting: EPA/TCEQ & City of Pasadena & Severn Trent - PRP Group mtg(s)  
Sure thing, Paul. I'm proposing 1:30 pm to 3:30 pm if that time works for everyone. I've passed that along to the PRP Group attorneys as well. Will let you know what I hear back from them.

Ed Q.

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**From:** [sebyp@gtlaw.com](mailto:sebyp@gtlaw.com) [mailto:[sebyp@gtlaw.com](mailto:sebyp@gtlaw.com)]  
**Sent:** Thursday, May 03, 2018 11:56 AM  
**To:** Quinones, Edwin <[quinones.edwin@epa.gov](mailto:quinones.edwin@epa.gov)>; [mdigiglia@glllaw.com](mailto:mdigiglia@glllaw.com)  
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**Subject:** RE: USOR Site Meeting: EPA/TCEQ & City of Pasadena & Severn Trent - PRP Group mtg(s)  
Ed- ST and the City have to make travel arrangements, so please let us know the start time asap on the 15th. Thanks

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**From:** Quinones, Edwin [<mailto:quinones.edwin@epa.gov>]  
**Sent:** Thursday, May 03, 2018 10:48 AM  
**To:** Seby, Paul (Shld-DEN-Env); [mdigiglia@glllaw.com](mailto:mdigiglia@glllaw.com)  
**Cc:** [bdoherty@glllaw.com](mailto:bdoherty@glllaw.com); [egieger@glllaw.com](mailto:egieger@glllaw.com); [marc.sebo@tceq.texas.gov](mailto:marc.sebo@tceq.texas.gov); Josiam, Raji; Adams, Adam  
**Subject:** RE: USOR Site Meeting: EPA/TCEQ & City of Pasadena & Severn Trent - PRP Group mtg(s)

Hi Paul,

The EPA is available to meet the afternoon of May 15 at EPA's Dallas office. OSC Adam Adams and RPM Raji Josiam also plan to attend on behalf of the EPA. It's my understanding that Gary Justis, the

PRP Group's trial counsel, is trying to confirm that day and time for the PRP Group.  
Ed Q.

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**From:** [sebyp@gtlaw.com](mailto:sebyp@gtlaw.com) [<mailto:sebyp@gtlaw.com>]  
**Sent:** Wednesday, May 02, 2018 2:48 PM  
**To:** Quinones, Edwin <[quinones.edwin@epa.gov](mailto:quinones.edwin@epa.gov)>; [mdigiglia@glllaw.com](mailto:mdigiglia@glllaw.com)  
**Cc:** [bdoherty@glllaw.com](mailto:bdoherty@glllaw.com); [egieger@glllaw.com](mailto:egieger@glllaw.com); [marc.sebo@tceq.texas.gov](mailto:marc.sebo@tceq.texas.gov)  
**Subject:** USOR Site Meeting: EPA/TCEQ & City of Pasadena & Severn Trent - PRP Group mtg(s)  
**Re:** *USOR Site PRP Group v. A&M Contractors, Inc. et al. Status Update and Request for Meeting*

Ed -

Thank you for getting back to us last week after the teleconference we requested, and participated in with you on March 27, 2018. During that teleconference, the City of Pasadena and Severn Trent asked you to set up a meeting with representatives from the Texas Commission on Environmental Quality ("TCEQ") and EPA to discuss the regulatory feasibility and permitting requirements that may be implicated by the USOR Site PRP Group's proposed in-kind approach. On our call, we anticipated that after the aforementioned meeting, we would then meet with the USOR Site PRP Group as well.

As you know, we have been in frequent communication with EPA since receiving and reviewing the USOR Site PRP Group's settlement framework on September 22, 2017. In the fall of 2017, the USOR Site PRP Group proposed to perform a removal action along with both vessel and subsurface sampling. The proposal would also require the City to participate by undertaking in-kind services. Such in-kind services would include (1) accepting non-hazardous liquid wastes and sludges; and (2) agreeing to re-acquire the property once it is fully remediated. The USOR PRP Group's proposal failed to recognize Severn Trent's role as contract operator of the New Vince Bayou Sewage Treatment Plant or its contractual obligation to operate such facility within the conditions of the Texas Pollutant Discharge Elimination System ("TPDES") Permit and the requirements of the City's Pretreatment Program.

On November 8, 2017, you informed us that EPA decided to proceed with an Administrative Order on Consent ("AOC"), which would require the performance of a removal action and a remedial investigation of the USOR property, as a result of EPA's belief that there was no need to pursue a full Remedial Investigation/Feasibility Study. You also informed us that the City's agreement to re-acquire the property would not be part of this AOC. Nevertheless, we discussed potentially having a "kick-off" meeting that would initiate potential settlement talks between the City, Severn Trent, the USOR Site PRP Group, and the Receiver of the property. We remain open to such a meeting and further discussions on the topic.

In November and December, the City and Severn Trent developed a position paper on the "Domestic Sewage Exclusion" under the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for publicly owned treatment works ("POTW"), an area of law that EPA had asked us for additional information about, and one that was all but ignored by the U.S District Court in its August 2, 2017 decision. We provided that position paper to you on December 7, 2017. ("POTW Position Paper"). Throughout the month of December, we had several discussions with you regarding scheduling a meeting with EPA and other parties. We expressed that

the City and Severn Trent would be glad to participate in a site visit and meeting with EPA and the USOR Site PRP Group and their respective technical representatives, but noted that we thought such a site visit and meeting would be more productive after we received the USOR Site PRP Group's Rule 26 Disclosures and EPA's feedback on our POTW Position Paper.

During February and March, the City and Severn Trent participated in several conference calls with EPA regarding outstanding issues and questions related to liability and the Domestic Sewage Exclusion. As we have expressed before, the City and Severn Trent do not agree with EPA's interpretation of the Domestic Sewage Exclusion as it applies to CERCLA liability, nor its understanding of the Court's findings (or lack thereof) on the issue. Further, we respectfully believe the Court's August 2, 2017 decision was inaccurate and failed to address certain important legal issues.

Despite these differing views, we continue to be open to a reasonable and fair settlement and we have continued to actively participate and cooperate in conversations with EPA regarding the remedial investigation and work. As such, we had requested that EPA facilitate the referenced requested meetings, first, with the TCEQ and EPA to discuss technical and permit-related considerations associated with the USOR Site PRP Group's settlement proposal and then together with the USOR Site PRP Group. To be clear, the City and Severn Trent are ready and willing to meet with EPA and the USOR Site PRP Group to discuss the City's and Severn Trent's in-kind service as their method of participating in a settlement with both the EPA and the USOR Site PRP Group. Our suggestions for two meetings was merely to inform and facilitate making these efforts as meaningful as possible.

As such , we continue to strongly encourage EPA to first set up a meeting with the TCEQ and EPA to discuss and reach an understanding regarding: (1) the analytical data and the thoroughness of sampling that TCEQ would require for the material present at the former MCC Recycling Facility; and (2) the TPDES Permit modifications that must occur, and any potential revisions to the City's Pretreatment Program (which would also require City Council approval), that may be necessary before the USOR Site PRP Group's proposed in-kind service could be deemed feasible and implementable.

However, based upon your April 25, 2018 email to counsel for the City and Severn Trent, it does not appear that EPA is willing to schedule such a meeting with the TCEQ and the EPA prior to the meeting with EPA and the USOR Site PRP Group. Accordingly, counsel for the City and Severn Trent, and possible technical representatives of each, can meet with EPA ( at EPA's Dallas regional offices ) and the USOR Site PRP Group on May 15, 2018. Please confirm this meeting date and time at your earliest convenience.

Regards -

**Paul M. Seby**

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**From:** Quinones, Edwin [<mailto:quinones.edwin@epa.gov>]

**Sent:** Wednesday, April 25, 2018 3:42 PM

**To:** Mike DiGiglia; Seby, Paul (Shld-DEN-Env)

**Cc:** Brendan Doherty; Ernie Gieger; [marc.sebo@tceq.texas.gov](mailto:marc.sebo@tceq.texas.gov)

**Subject:** RE: POTW Position Paper- USOR Site

Hi All,

Thanks again for your email below and for the previous conference calls regarding the proposed approach. I've since been able to have discussions with TCEQ attorney Mark Sebo, and EPA ORC and Superfund Branch Chiefs and NPDES staff regarding the qualifications you've laid out on our request for a meeting and participation in good faith negotiations. Based on those discussions, the EPA is unable to accept your qualifications for at least two main reasons.

Firstly, both the EPA and TCEQ are unsure about the concurrence needed from the agencies regarding the TXPDES permit. Both the TCEQ and EPA are confused by what you seek from both agencies concerning the water permit. TCEQ's attorney, whom I'm copying in this email, has nevertheless expressed his agency's willingness to meet, but only after we fully understand what the City and Severn Trent specifically want or need concerning the water permit and any proposed amendments. Mr. Sebo has also asked for the following additional information to help in that regard:

- 1) A more detailed explanation of what you seek from both agencies concerning the water permit
- 2) The TXPDES Permit No.;
- 3) Proposed amendment(s) to the permit;
- 4) Volume and type of waste proposed to be received and discharged

It appears that before items 3 and 4 can be answered, details of the proposed approach must first be ironed-out and sampling and a calculation of volumetric waste in containment vessels must also be performed.

Secondly, the EPA has concerns that conditioning settlement negotiations with an additional meeting or meetings with TCEQ on matters that are solely within TCEQ's purview will unnecessarily delay matters even further. As you know, the water permitting process has been delegated to the State of Texas. EPA is concerned that its involvement in any request for a permit amendment in this particular context is unnecessary, may set a bad precedent, and may unduly interfere with TCEQ's delegated authority.

Notwithstanding the above, I proposed the following:

- 1) The EPA is nonetheless willing assist the City and Severn in scheduling a separate meeting with TCEQ to discuss its water permit.
- 2) The EPA is also willing to attend the meeting with limited participation but only if TCEQ approves. Assuming TCEQ approves, the EPA envisions its role being limited to providing TCEQ whatever technical information it has concerning the USOR Site.
- 3) Any such meeting(s) scheduled with TCEQ must not delay the initiation of settlement negotiations on the proposed approach. In other words, the EPA is willing to entertain a meeting with TCEQ on a separate date as long as the EPA, the City, Severn Trent and the PRP Group can meet to discuss the proposed approach, even if the TCEQ meeting occurs at a much later date than the initial proposed approach meeting. The EPA believes this may actually help the City and Severn Trent in any upcoming meeting with TCEQ, especially if further details of the approach and technical information of wastes is forthcoming for purposes of assisting TCEQ with its determination on any permit issues or amendments.

From recent conversations with PRP Group attorneys, I understand the district court expects the parties to meet with the EPA as soon as possible. If this understanding is correct, please let me know by the end of next week if my proposal is acceptable. If it is, please let me know your dates of availability for scheduling a meeting with the EPA and the PRP Group the weeks of May 7 and May

14. As always, if you have any questions, please feel free to call or email me.

Thanks and best regards,

Ed Quinones

Acting RCRA Branch Chief

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**From:** Mike DiGiglia [<mailto:mdigiglia@glllaw.com>]

**Sent:** Thursday, April 05, 2018 11:28 AM

**To:** Quinones, Edwin <[quinones.edwin@epa.gov](mailto:quinones.edwin@epa.gov)>; [sebyp@gtlaw.com](mailto:sebyp@gtlaw.com)

**Cc:** Brendan Doherty <[bdoherty@glllaw.com](mailto:bdoherty@glllaw.com)>; Ernie Gieger <[egieger@glllaw.com](mailto:egieger@glllaw.com)>

**Subject:** RE: POTW Position Paper- USOR Site

Ed,

To the extent you need a written response to your email below to cross the 't's" and dot the "i's," notwithstanding our subsequent conference call and follow up emails, for the record Severn Trent is interested in attending such a meeting and participating in good faith negotiations toward an in-kind settlement as proposed by the PRP Group with the qualification that we will need concurrence from both the EPA and the TCEQ that such an approach is feasible under the NPDES program. As you know and are probably in the process, we've asked you to set up a meeting with the TCEQ, EPA, the City and Severn Trent to discuss the regulatory feasibility and permitting requirements for the PRP Group's in-kind approach prior to the meeting with the PRP Group.

Thanks,

Mike

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**From:** Quinones, Edwin [<mailto:quinones.edwin@epa.gov>]

**Sent:** Friday, March 23, 2018 11:38 AM

**To:** [sebyp@gtlaw.com](mailto:sebyp@gtlaw.com)

**Cc:** Mike DiGiglia <[mdigiglia@glllaw.com](mailto:mdigiglia@glllaw.com)>; Brendan Doherty <[bdoherty@glllaw.com](mailto:bdoherty@glllaw.com)>

**Subject:** RE: POTW Position Paper- USOR Site

Dear Mr. Seby,

Thank you for providing the position paper and the legal arguments surrounding the City's and Severn Trent's potential CERCLA 107(a) liability as past owner/operator of a portion of the USOR Superfund Site (200 N. Richey Street property). I understand your argument to be as follows:

- To be liable as a past owner/operator, there must be a disposal at the time of ownership/operation of a hazardous substance.
- CERCLA 107(a) adopts the definition of "disposal" as that defined under RCRA, which states there must be a discharge, spilling, leaking, placing, etc. of a solid waste or a hazardous waste.
- Hazardous waste is a subset of solid waste and includes a solid waste or a combination of solid wastes that meets certain compositional criteria.
- RCRA's definition of "solid waste" includes garbage, refuse, sludge but specifically excludes "solid or dissolved material in domestic sewage."
- The sludge-like material found at the City's former wastewater treatment plant falls under the solid waste exclusion as a "solid or dissolved material in domestic sewage."

The points you made in favor of your argument were given serious thought and consideration and

included my having conferred with Region 6 and HQ attorneys with expertise in both CERCLA and RCRA. In my opinion, however, the argument lacks merit for the reasons given below.

Firstly, there is no evidence that the sludge-like material left behind when the City shuttered the wastewater treatment plant was ever sampled or tested. Nor is there any evidence that this material was part of the day to day ~~to~~ operations of a treatment plant. In fact, the City's own deed for sale of the property includes language notifying the buyer that the property may actually contain hazardous substances.

Secondly, even if the sludge-like material could have ever been considered at one time part of a "solid or dissolved material in domestic sewage," that exclusion would only have applied during the City's operation of the wastewater treatment plant. As you correctly point out, 40 C.F.R 261.4(a)(ii) states that the exclusion applies to "[a]ny mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment." The sludge-like material left behind was no longer passing through nor was it being treated when it was abandoned and left in place at the time of sale. Further, there is no evidence it was being or had ever been treated in the interim after the treatment plant was closed and before it was sold. Simply put, it no longer fell under the solid waste exclusionary category, assuming it ever fell under the exclusion to begin with, when it was abandoned in place.

Most importantly, however, is that the above position and the arguments against liability have become moot as a result of the U.S. District Court's ruling on August 2, 2017 finding the City liable as a past owner under CERCLA. To the extent your argument was not yet made to the Court prior to its ruling, it should have been made at that time. The EPA also understands the ruling was against the City only and not against Severn Trent. However, Severn Trent is a past operator of the wastewater treatment. The EPA sees no reason why the Court would rule differently for a past operator than it would for a past owner in this instance. Although the EPA was not a party to the litigation that resulted in the August 2<sup>nd</sup> ruling, the EPA is nevertheless bound to respect it and sees no reason to intervene or challenge the decision as erroneous, assuming it would even have the authority to do so.

Notwithstanding my opinion on this matter, I believe it to be more productive to seek instead a resolution involving the EPA, the PRP Group, the City and Severn Trent that addresses response efforts remaining at the Site, specifically the 200 North Richey Street property, and the parties' CERCLA liabilities. This resolution would include at the outset a removal action of wastes remaining in any containment vessels and at the very least a remedial investigation. To that end, I propose a meeting with all parties to begin settlement talks based mainly on the proposal initially submitted by the PRP Group. I believe both the City and Severn Trent have already received the PRP Group's proposal in writing.

EPA Region 6 management sees no objection to proceeding with settlement talks concerning most of what the proposal includes. However, as stated above, any sampling as initially proposed must include sampling equivalent to that of a remedial investigation.

Mr. DiGiglia has proposed to me that any discussions amongst the parties should first focus on sampling. If I understand Mr. DiGiglia's request, his client is not ready at the moment to discuss the proposal at large without first discussing sampling parameters.

I've noted, however, that one of the main components of the PRP Group's proposal includes a sampling effort (which the EPA insists must be equivalent to that of a remedial investigation). Given that sampling is a major component of the proposal, EPA sees no reason to bifurcate, if you will, or limit discussions only to issues concerning sampling. As such, I invite you and Severn Trent to attend

a meeting that would also include a technical representative from each to participate in settlement discussions of an Administrative Order on Consent to perform a removal action and a remedial investigation at the 200 North Richey Street property.

I understand we have a conference call scheduled for this coming Tuesday, March 27. We can discuss this further at that time if you'd like. Otherwise, please let me know within 14 days if the City and Severn Trent would be interested in attending such a meeting and participating in good faith negotiations toward such a settlement.

Sincerely,

Ed Quinones

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**From:** [sebyp@gtlaw.com](mailto:sebyp@gtlaw.com) [<mailto:sebyp@gtlaw.com>]

**Sent:** Tuesday, December 05, 2017 11:50 AM

**To:** Quinones, Edwin <[quinones.edwin@epa.gov](mailto:quinones.edwin@epa.gov)>

**Cc:** [mdigiglia@gllaw.com](mailto:mdigiglia@gllaw.com); [bdoherty@gllaw.com](mailto:bdoherty@gllaw.com)

**Subject:** POTW Position Paper- USOR Site

Greetings Ed-

Following up on our conversation, attached is the position paper we discussed.

The City of Pasadena and Severn Trent Environmental Services would appreciate EPA's prompt review and consideration of these issues. After you have had an opportunity to review and consider the attached, please let us know if we can arrange a time to visit- on both the paper and the points in your email yesterday.

Thanks

**Paul M. Seby**

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